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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEXIS C.,

Defendant and Appellant.

D061747

(Super. Ct. No. J221581)

APPEAL from a judgment of the Superior Court of San Diego County, Peter C. Deddeh, Judge. Affirmed.

Alexis C. (Minor) was charged by an amended petition filed in the juvenile court with one count of forcible rape in concert (Pen. Code,¹ §§ 261, subd. (a)(2) & 264.1) and one count of forcible rape (§ 261, subd. (a)(2)) with the allegation that each crime was committed to benefit a criminal street gang (§ 186.22, subd. (b)). The juvenile court made a true finding on both counts and found the enhancements to be true. The Minor

¹ All further statutory references are to the Penal Code unless otherwise specified.

was committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice for a maximum commitment period of 12 years.

The Minor appeals contending the court erred in permitting the introduction of his interview with police in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). We find the juvenile court properly found that the Minor was not in custody for purposes of *Miranda* when he was interviewed by police. Accordingly, we will find the Minor's statements were properly admitted into evidence and affirm.

STATEMENT OF FACTS

The Minor does not challenge the sufficiency of the evidence as to either count or the enhancements. He only challenges the admissibility of his statement to police. Therefore it is sufficient to simply note he was found to have participated in a gang rape of a teenage girl, along with members of the Posole street gang. It is not necessary to recite the unfortunate details of the offenses.

DISCUSSION

The Minor, who was 14 years old at the time, was interviewed by an Oceanside Police detective regarding the events surrounding the rape of the victim. At the time, the Minor was confined at Breaking Cycles, a juvenile camp facility. He was advised he did not have to talk with the detective and that he was free to leave the interview, however, the Minor was not advised of his rights under the *Miranda* rule.

The Minor contends he was in custody at the time of the interview and that the detective was required to inform him of his *Miranda* rights. After reviewing the record and the briefs, we requested that the parties file supplemental briefs discussing *J.D.B. v.*

North Carolina (2011) ____ U.S. ____ [131 S.Ct. 2394] (*J.D.B.*) and *Howes v. Fields* (2012) ____ U.S. ____ [132 S.Ct. 1181] (*Fields*). The parties complied with the court's request and filed supplemental briefs discussing both cases.

After reviewing the record in light of the new authorities, we conclude that the juvenile court correctly found the minor was not in custody for *Miranda* purposes at the time of his interview. Thus, the court correctly overruled the Minor's objection.

A. The Standard of Review

When we review the denial of a motion to suppress a statement obtained in alleged violation of *Miranda*, we review the court's factual determinations under the deferential substantial evidence standard. Once we determine there is sufficient substantial evidence to support the trial court's factual findings, we review the legal significance of those facts de novo, using our independent judgment. (*People v. Moore* (2011) 51 Cal.4th 386, 395.)

B. The Interview of the Minor

An Oceanside Police detective interviewed the Minor at a Breaking Cycles camp facility where the Minor was being housed for an unrelated offense. A staff person brought the Minor to an administrative office where the detective was waiting. The detective was not in uniform. The Minor was informed of the purpose of the interview and was told he was free to leave. The Minor was also informed he was being interviewed as a witness and that he was not going to be arrested. The detective asked if it was okay to talk and the Minor agreed. Toward the end of the interview the Minor was asked if he felt he was forced to talk and the Minor said "no." When the Minor did

ask if he was free to leave the detective reminded him he had always been free to leave and that the Minor had said he was willing to stay and talk.

C. Legal Principles

When a person is in custody and subject to a process of interrogation, the person must first be warned of the rights identified in *Miranda*. (*People v. Mickey* (1991) 54 Cal.3d 612, 648.) However, if the person is not in custody, as that term is defined in *Miranda*, the warning is not required. (*People v. Ochoa* (1998) 19 Cal.4th 353, 401; *People v. Mosley* (1999) 73 Cal.App.4th 1081, 1088.)

Persons who are in jail, or prison, are not "per se" in custody for purposes of *Miranda*. (*People v. Macklem* (2007) 149 Cal.App.4th 674, 693.) Rather, the question of custody must be determined from the totality of circumstances and whether the manner of the interview would cause a reasonable person to believe he or she is so restricted that the interview has become a custodial interrogation.

"Although no one factor is controlling, the following circumstances should be considered: '(1) [W]hether the suspect has been formally arrested; (2) absent formal arrest, the length of the detention; (3) the location; (4) the ratio of officers to suspects; and (5) the demeanor of the officer, including the nature of the questioning.' [Citation.] Additional factors are whether the suspect agreed to the interview and was informed he or she could terminate the questioning, whether police informed the person he or she was considered a witness or suspect, whether there were restrictions on the suspect's freedom of movement during the interview, and whether police officers dominated and controlled the interrogation or were 'aggressive, confrontational, and/or accusatory,' whether they

pressured the suspect, and whether the suspect was arrested at the conclusion of the interview. [Citation.]" (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403-1404.)

We turn next to the setting of the interview and the case law regarding interviews of persons in jail or prison.

The U.S. Supreme Court in *Fields, supra*, 132 S.Ct. 1181, addressed the question of whether a prisoner serving time in a jail or prison was automatically in custody for purposes of *Miranda*. The court held that prisoner status alone was not enough to turn an interview into a custodial interrogation under *Miranda*. As in the present case, Fields was in jail for an offense unrelated to the subject of the interview. In that case, Fields was involved in an interview that lasted at least five hours. He had been told he was free to leave and go back to his cell whenever he wanted to do so. Fields was not physically restrained nor was he threatened by the officers. The court, in finding Fields was not in "custody" noted that persons in jail are usually restricted in their movements around the facility, thus being brought to the interview by a jail staff person did not create custody. The court concluded that where the prisoner was informed he was free to leave, not threatened or restrained, the person was not in custody for purposes of *Miranda*. (*Fields, supra*, at pp. 1192-1193.)

In addition to the fact the Minor was housed in a juvenile facility, we must consider the fact that he was 14 years old at the time of his interview. The U.S. Supreme Court in *J.D.B, supra*, 131 S.Ct. 2394, held that a court addressing whether a minor was in custody for *Miranda* purposes must consider the minor's age, at least where it is known

or objectively apparent to a reasonable officer at the time of questioning. (*Id.* at pp. 2404-2406.)

In the present case, the trial court did not specifically address the Minor's age, nor did counsel specifically focus on age as an indication of custody. However, the officer was clearly aware that the Minor was a juvenile. Indeed, the interview took place at a juvenile camp facility. Further, the adjudication in this case took place in the juvenile court where the Minor's age was contained in the court records.

D. Analysis

Here, the trial court believed the testimony of the interviewing detective and listened to the taped interview of the Minor. The court found that interview took place at a juvenile camp facility in a dorm-like setting. The Minor was not restrained, was told he was free to leave, that he did not have to talk to the officer, that he was not going to be arrested, and that the interview was conducted in a "low key" nonthreatening manner. Finally, the court found the Minor was fully aware of the purpose of the interview.

Based upon the trial court's factual findings, which are supported by substantial evidence in the record, the trial court correctly concluded the Minor was not in custody for *Miranda* purposes at the time of the interview. Thus, the detective was not required to give the *Miranda* warning before talking to the Minor.

Dealing then with the question of the Minor's age, it is clear the officer and the court were aware of the Minor's youth. Although the issue was not specifically addressed in the discussions between court and counsel, the court did make a significant finding about the Minor's mental state. Specifically, the court found the Minor was fully aware

of the purpose and nature of the interview. We take that as an implied finding that the Minor's youth did not create a circumstance akin to custody, as may have been the case in *J.D.B., supra*, 131 S.Ct. 2394. The record supports a conclusion the Minor was fully aware he was free to terminate the interview, but that he made a decision to stay and talk. There is no basis in the record to support any inference that he was intimidated or failed to understand his circumstances at the time he decided to speak to the detective.

Accordingly, we find the trial court properly overruled the Minor's objection to the introduction of his statement to the detective.

DISPOSITION

The judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.